

APPENDIX D

MINIMUM ES&H PERFORMANCE

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This Appendix addresses and clarifies the minimum ES&H performance clause of the PHMC. In accordance with the PHMC, this clarification will be set for the in the DOE-RL approved ISMS Plan.

PHMC Minimum ES&H Performance Clause H.47.B.(1):

"ES&H Program The Contractor shall develop, obtain DOE approval of, and implement a comprehensive ES&H Program across the appropriate ES&H functional areas. Such Program will be consistent with the Integrated Environment, Safety and Health Management System Plan (ISMS Plan). The minimal performance requirements of the Program will be set forth in the DOE approved ISMS Plan. The Contractor must achieve the minimum performance requirements of the program in order to receive any otherwise earned fee, profit, or share of cost savings."

Clarification

The clause is intended to strengthen DOE's ability to manage and oversee ES&H by imposing significant penalties for egregious actions. The clause allows DOE to exercise prudent judgment to impose substantive penalty when contractors willfully place public and worker safety and health or the environment at significant risk by actions such as:

- Willful disregard of established standards and requirements
- Refusal to implement necessary aspects of the ES&H program (which are within the scope of the PHMC)
- Repeated instances where ES&H program funding is sacrificed to spare aspects of mission funding
- A pattern of neglect on the part of management regarding worker ES&H concerns
- Disregard for environmental law, indicative of a breakdown in environmental management system
- Repeated failure of management systems to respond to serious assessment findings and ensuring corrective actions are taken.

The expected Minimum ES&H Performance requirements focus on the establishment of an effective ISMS Plan that is clearly supported in routine and nonroutine functional operations by DOE and contractor management. Acceptance of significant risks beyond levels normally limited by the approved ISMS requires approval from the highest levels of Contractor and DOE management.

Contractor implementation of the DOE approved Hanford Project ISMS Plan provides assurance that worker and public safety and health, and the environment are being addressed in a defined systematic approach to a set of established requirements and accepted practices. While this approach will enhance performance, no guarantees can be given that incidents, accidents, and releases to the environment will not occur. Off-normal occurrences and accidents can be the result a wide range of causal factors including failure to follow procedures, human error, errors in judgment, negligence; all regrettable, but none individually of such significance as to invoke the Minimum ES&H Performance Clause. The Minimum ES&H Performance Clause is not intended to be measured by completion of a related performance agreement or through establishing specific fixed criteria or statistical performance indicators.

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